

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

RAHMAN LAMAR,

Defendant.

CASE NO. 8:07CR426

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 117, 119). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Role

Both parties object to the 4-level role enhancement under U.S.S.G. § 3B1.1(a) in ¶ 25 and related paragraphs. The plea agreement states that the parties agree that the Defendant should not receive an upward or downward adjustment for role. The Court's tentative finding is that the plea agreement should be upheld.

¶¶ 32, 33 - *Related Offenses*

The Defendant argues that these are consolidated offenses. These appear to be separate offenses as there is an intervening arrest, defined as an arrest for the first offense (¶ 32) before committing the second offense (¶ 33). U.S.S.G. § 4A1.2(a)(2). The Defendant was arrested for the first offense on June 19, 1997, and sentenced on August 1, 1997, to 18 months probation. It appears that the second offense constituted one violation of his probation. He was sentenced on the same date for his probation violations

and the second offense. However, due to the intervening arrest these are separate offenses. The objection is denied.

CONCLUSION

The total offense level is 27. The criminal history category is IV. Considering the statutory minimum, the guideline range is 120-125 months. The fine range is \$12,500 to \$4,000,000.

IT IS ORDERED:

1. The government's Objections to the Presentence Investigation Report (Filing No. 119) are granted;
2. The Defendant's Objections to the Presentence Investigation Report (Filing No. 117) are granted in part and denied in part as follows:
 - a. The objection to role in the offense, ¶ 25, is granted;
 - b. The objection to ¶¶ 32 and 33 being considered as separate offenses is denied;
3. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
4. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

5. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 12th day of August, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge